

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

PHILLIP FOSTER, on behalf of himself )	C/A: 4:14-cv-04517-RBH
and all others similarly situated, )	
)	
Plaintiff, )	
)	
v. )	<b>RULE 16(a)(1)</b>
)	<b>ORDER</b>
M5 HOSPITALITY GROUP, LLC d/b/a )	
GOOD TIME CHARLEY’S and )	
PETE LLOYD, individually, )	
)	
Defendants. )	
)	

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Plaintiff, Phillip Foster (“Plaintiff”), on his behalf and on behalf of employees similarly situated, including all opt-in Plaintiffs , (collectively, “Plaintiffs”) and Defendants M5 Hospitality Group, LLC d/b/a Good Time Charley’s (“GTC”) and Pete Lloyd (“Lloyd”), (collectively “Defendants”), have jointly moved for an Order, pursuant to FRCP 16(a)(1), to stipulate to certain issues in an effort to streamline this action. Defendants have negotiated a compromise in which each is giving up certain rights, but each believes it is best for them in proceeding with this action. Plaintiffs and Defendants agree to the following, thus:

**IT IS ORDERED:**

1. Plaintiffs will dismiss, with prejudice, their Third Cause of Action alleging violation of the South Carolina Payment of Wages Act.
  
2. In exchange for this dismissal, Defendants consent that Plaintiffs have, under their current first cause of action alleging violations of the FLSA, as an additional, available remedy to them, the ability to recover all tips he or she contributed to the one Tip Pool. This remedy is outlined in Fact Sheet #15 from the Wage & Hour Division of the U.S. Department of Labor.

This remedy, pursuant to this compromise and joint motion, is available for both actual damages and liquidated damages under the burdens of proof of actual damages and liquidated damages under the FLSA. This remedy is in addition to all other remedies available to Plaintiffs under the FLSA.

3. For the damages recovered for the tips contributed to the Tip Pool in section 2 above, and only for these damages, Plaintiffs will allow the Court to reduce these damages to a maximum of two (2) years. For all other damages, Plaintiffs retain the right to seek damages, if proven according to the FLSA, for three (3) years.

4. Neither this motion nor any of its content will be admissible to the jury.

**IT IS SO ORDERED.**

February 9, 2016  
Florence, South Carolina

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge